Assessment Year 1990-91

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

I.T.A. No. 524 of 2001

The Commissioner of Income Tax,
Dehradun & another ……. Appellants

Versus

Reading & Bates Exploration Co.,
As agent of Mr. B. Vidrine …….. Respondent

Hon. P.C. Verma, A.C.J.
Hon. Rajesh Tandon, J.

Mr. S.K. Posti, advocate for appellants.

The matter is squarely covered by our decision dated 9th October, 2003 in Income Tax Appeal No. 57 of 2002; The Commissioner of Income Tax, Dehradun & another V/s SEDCO Forex Internation Drilling Co. Ltd.

The question raised before us is follows:

QUESTIONS:

1. Whether on the facts and circumstances of the case ITAT was legally correct to hold that the salary paid to the assessee for the off period outside India was not chargeable to Indian Income Tax Act in terms of section 9(1)(ii) of the IT Act, 1961, whereas the Ld. ITAT has itself held, vide orders dated 25.3.92 in ITA No. 5649/D/92, dated 28.7.99 in ITA No. 1079/D/91, dated 24.1.2000 in ITA No. 411/D/93 and dated 15.5.2000 in ITA No. 1648/D/94, that off period salary is taxable in India and vide order dated 18.11.96 in RA No. 433 to 511/D/96 has referred question of law on this issue for esteemed opinion of this Hon'ble Court?

2. Whether on the facts and circumstances of the case the ITAT was legally correct in holding that free boarding facility provided by the employer on board the rig in high seas cannot be constructed to be perquisite?

In our decision dated 9th October 2003 in Income Tax Act Appeal No. 57 of 2002; The Commissioner of Income Tax, Dehradun & another V/s SEDCO Forex International Drilling Co. Ltd., the reasoning regarding question No. 1 is as under:

"Therefore the payment of salary for OFF period was income earned in India i.e. for services rendered in India u/s 9(1)(ii).

Lastly, we would like to point out that in this case the assessment records show that from the income of the Indian operations the salary in its entirety (including salary for the off period) has been paid by the employer Company. This conduct shows the intention of the contracting parties. Hence the entire salary for both the periods was taxable in India u/s 9(1)(ii)."

The reasoning regarding question No. 2 is as under:

"In this case, assessee had to work on the rig. It was hazardous, arduous and continuous. Under such circumstances free food and beverages is a necessity. It is not a luxury. It is not a perquisite. Its value cannot be added to the income of the assessee."

For the reasons aforesaid, we answer the first question in the negative i.e. in favour of the department and against the assessee and the other question is answered in the affirmative i.e. in favour of the assessee and against the department.

Appeal is disposed of. No order as to costs.

(Rajesh Tandon, J.) **(P.C. Verma, A.C.J.)**

Dt. 06.05.2004
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